

City of Detroit

CITY COUNCIL

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ANNE MARIE LANGAN
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TO: COUNCILMEMBERS

FROM: Irvin Corley Jr., Director *ICJ*
Anne Marie Langan, Deputy Director *Am*

DATE: September 12, 2008

RE: Intergovernmental Agreement with Detroit Housing Commission for
Demolition of Public Housing

At the meeting of the Public Health and Safety Standing Committee on Monday, September 8, 2008, Council requested that the Fiscal Analysis Division review analyze and advise City Council regarding a proposed intergovernmental agreement with the Detroit Housing Commission (DHC) to permit demolition and environmental investigation and remediation of Douglass Homes Public Housing through the some of the City's current contractors, Lakeshore Engineering and Joy Construction.

The Research and Analysis Division (RAD) already presented to Council a thorough analysis of the issues. Fiscal agrees with all of the questions they have posed to the Administration.

1. How is it that BSE has available appropriations to set this up for DHC, prior to receiving funds from them, as the city has such limited appropriations for demolition work that should already be committed for this year's demolition work plan?
2. Why wouldn't the DHC contract this on their own, as they follow federal contracting guidelines which contain fewer steps and responsibilities for the contractor, which would most likely enable the contractor to deliver a less expensive product?
3. If, for some reason, the city does not pay the contractors in a timely manner, will the DHC reimburse the city for prompt payment penalties?
4. Is the city currently providing any services to the DHC? Have bills been issued and payment received? Council may recall that beginning in 1995, DHC had grants for police officers to be assigned 100% of their time to the

DHC properties. In the subsequent years after the grant funding ended, there were so many disputes in the billings for this project that the account receivables (AR's), which totaled approximately \$18 million were on the city's books until this last comprehensive financial annual report (CAFR) for 2006 finally wrote them off as uncollectible.

5. Once the demolition is completed, is there a development planned for this parcel? Will it include housing for low-income citizens?

Again, we agree with RAD's report that the Administration needs to provide sufficient information to explain how this agreement is in the city's interest as well as DHC's interest.

Currently with the information provided, Fiscal cannot determine any reason that this proposal would be in the city's best interest.

Attachments

Council Divisions
Auditor General
Norman White, Finance Director
Amru Meah, BSE Director
Eugene Jones, DHC Executive Director
Kerwin Wimberley, Mayor's Office

Public Health & Safety
Standing Committee
Referred to Committee: _____
LINE ITEM# 92 Date: 9-8-08
Disposition _____

City of Detroit

CITY COUNCIL

DAVID D. WHITAKER
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PEGGY ROBINSON
Deputy Director
(313) 224-4946

TO: Honorable City Council

FROM: David Whitaker, Director *DL*
Research & Analysis Division Staff

DATE: August 6, 2008

RE: **INTERGOVERNMENTAL AGREEMENT WITH
DETROIT HOUSING COMMISSION ("DHC") FOR
DEMOLITION OF PUBLIC HOUSING**

At the meeting of the Public Health & Safety Standing Committee, on Monday, July 28, 2008, Your Honorable Body requested that Research and Analysis Division (RAD) review, analyze and advise City Council, regarding a proposed intergovernmental agreement with the DHC, to permit demolition of Douglass Homes Public Housing Development by the City. This is RAD's Report:

Background

As Your Honorable Body may know, in 1996 the Michigan Legislature amended the Michigan Housing Facilities Act, MCLA 125.651 *et seq*, and designated housing commissions, such as the DHC, as distinct "public bodies corporate," with enumerated independent powers and authorities.¹ Therefore, for the last 5 years, the City of Detroit has not exercised any control over the DHC, which was eventually taken over by the US Department of Housing and Urban Development (HUD).

¹ Subsequently, on June 17, 2003, the Michigan Supreme Court held that this amendment to the statute severed any coemployment relationship between the City of Detroit and the DHC, by operation of law. *AFSCME v City of Detroit*, 468 Mich 388 (2003). However, as a practical matter the DHC has continued to maintain ongoing relationships with numerous City departments and authorities, including Buildings & Safety Engineering (B&SE).

July 25, 2008 Proposal

The Buildings & Safety Engineering Department (B&SE) advises Your Honorable Body that The US Department of Housing and Urban Development (HUD) has authorized demolition and redevelopment of the Douglass Homes Housing Development.² All former residents have reportedly been relocated, and the entire project is currently vacant. Maps and aerial images of this location are attached.

The City and the DHC have reportedly agreed that it is mutually beneficial to demolish these structures on an expedited basis, using the City's demolition procedures and existing contractors. They have provided a negotiated Intergovernmental Agreement to that end. Lakeshore Engineering Services, Inc and Joy Construction Leasing, Inc. have reportedly been selected to commence this work immediately upon Council's approval of the Agreement, which is "urgently request[ed]."

The Proposed Intergovernmental Agreement

The proposed Intergovernmental Agreement is between the City, acting through B&SE, and the DHC. It correctly identifies the master street address and location of the Douglass Homes as 2501 St. Antoine. It is to be signed by the Mayor on behalf of the City, and by Executive Director Eugene N. Jones, Jr. on behalf of the DHC. It recites that the existing Project is untenable, that it would not be economically feasible to repair and rehabilitate the existing structures, and that the Commission has determined that they should be demolished in their entirety.

The proposed Intergovernmental Agreement states that the demolition will occur in phases, beginning with the 12 two-story row house buildings located between St. Antoine and Beaubien, with demolition by the City of the other mid-rise and high-rise structures within the Project, "together with infrastructure improvements appurtenant thereto, to follow in one or more future phases, provided the City and the Commission mutually agree to the terms, conditions, specifications and price for such future phase demolition activities proposed to be undertaken by the City for the mutual convenience and benefit of the City and the Commission." (P. 2, final "WHEREAS" clause) City Council approval will be required for any future phases of demolition. (P. 4, ¶ 9)

In a lengthy and, in RAD's opinion, a rather poorly worded key provision, DHC agrees to reimburse the City for up to \$300,000 for demolition, and up to \$100,000 for environmental investigation and remediation.³ (P. 2, ¶ 2) Lakeshore Engineering will

² B&SE incorrectly states in its memo to Council, dated July 25, 2008, that this development is located at 2921 Fourth St. In reality, it is located at 2501 St. Antoine.

³ This provision states: "The Commission agrees to reimburse the City for costs incurred in connection with the demolition of the row house structures, for a total amount not to exceed \$300,000.00 for demolition activities themselves, which amount has been estimated by the City on the basis of the bid prices for non-emergency demolition of

perform the environmental remediation. Joy Construction will perform the demolition of the 12 two-story row house buildings.

The proposed Intergovernmental Agreement gives the DHC "the right to oversee and monitor the demolition activity of the City's demolition contractor and ... the authority to stop the demolition if the City's contractor fails to comply with the demolition specifications in the demolition contract." Moreover, another provision states that either party has the option of terminating the agreement, in the event that the DHC gives the City and the contractor "written notice of and reasonable opportunity to cure and or correct" an alleged failure to comply with the contract specifications. In that event the DHC is obligated to pay "costs incurred for demolition work completed through the specified termination date." (P. 3, ¶ 5)

The proposed Intergovernmental Agreement further requires the City to provide the DHC "with copies of its existing contracts such that the Commission can review the precise terms and conditions for insurance and indemnity and determine them to be acceptable to it prior to any issuance by the City of any Notice to Proceed pursuant to this Agreement." (Pp. 3-4, ¶ 7b) Demolition is an inherently dangerous activity, with a significant risk of severe loss in the event anything goes wrong. Therefore, it is appropriate that this proposed Intergovernmental Agreement requires that the contractors who will be paid to do the work obtain insurance and agree to indemnify the City and the DHC for any losses caused by their activities.

Discussion

RAD has some concerns: In this proposed Intergovernmental Agreement, the DHC agrees to reimburse the City for all demolition and environmental remediation costs of this Project. While that is certainly appropriate, RAD has a few questions, which Council may want to address to the Directors of B&SE and DHC. The amount of indemnification by DHC is limited to \$300,000 for demolition and \$100,000 for environmental remediation, "which amount [the \$300,000] has been estimated by the City on the basis of the bid prices for non-emergency demolition of structures in existing City demolition contracts." There is apparently no stated basis for the \$100,000 figure applicable to environmental remediation. At this time, RAD has the following questions:

- What happens if the City's estimate proves to be low?

structures in existing City demolition contracts, together with such additional amounts as may be required to cover costs incurred by the City and/or its contractors for environmental enquiry as to the condition of the row house structures and abatement of hazardous conditions discovered therein requiring abatement prior to commencement of actual demolition to the extent required to comply with National Emission Standards for Hazardous Air Pollutants ("NESHAP") and Michigan Department of Environmental Quality ("MDEQ") requirements and regulations, not to exceed the amount of \$100,000 to cover such environmental inquiry and remediation activities." Perhaps this paragraph, which amounts to one run-on sentence addressing several related issues, should be rewritten to more clearly express the intent of the parties.

- What are the chances of that?
- Who bears the risk of cost overruns, if any?
- What is the basis for the \$100,000 figure for environmental remediation?
- Has there been any attempt to get bids for this work? Would that be useful?
- Would approval of this proposed Intergovernmental Agreement, in this form, be likely to expose the City to excessive costs over and above the \$400,000 total for demolition and environmental remediation? As drafted, if the costs of demolition and remediation exceed, \$400,000, wouldn't that be the result? Does the City have any protection from that risk?

If answers to the above-stated line of inquiry satisfy Your Honorable Body that the City's interests are fully protected in connection with this proposed Intergovernmental Agreement, then it may well be in the City's best interests to enter into this agreement, in order to achieve its objective of demolishing and presumably redeveloping blighted public housing. But more detailed information from B&SE and the DHC may be useful in making that decision. RAD suggests that this report be forwarded to the administration and the DHC, for their review and comment.



CITY OF DETROIT
BUILDINGS & SAFETY ENGINEERING DEPARTMENT

CITY OF DETROIT
BUILDINGS AND SAFETY ENGINEERING
ADMINISTRATION
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July 25, 2008

HONORABLE CITY COUNCIL

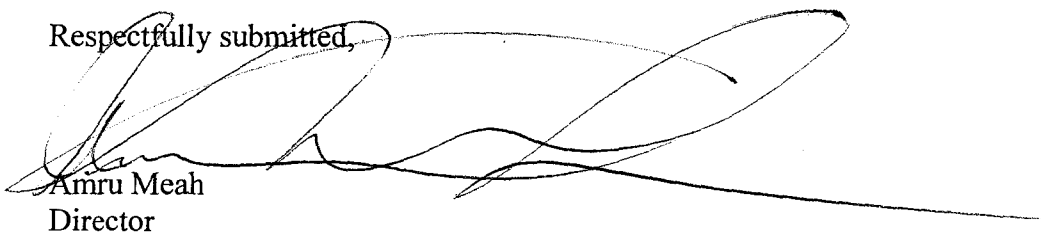
RE: Intergovernmental Agreement with Detroit Housing Commission ("DHC")
to permit demolition by the City of Douglass Homes Public Housing Development

The U.S. Department of Housing and Urban Development has authorized demolition and redevelopment of the Douglass Homes Housing Development, which is bounded by the Chrysler Expressway Service Drive and Alfred, St. Antoine, Wilkins, Beaubien and Winder Streets and identified generally by street address as 2921 Fourth Street. All former residents have been relocated and the entire project is currently vacant.

The City and DHC have agreed that it is mutually beneficial to demolish these structures on an expedited basis using the City's demolition procedures and existing contractors and have negotiated the attached Intergovernmental Agreement as a means by which that can be accomplished. The City has multiple environmental remediation firms and demolition contractors currently under contracts that have already been approved by City Council, and Lakeshore Engineering Services, Incorporated and Joy Construction Leasing, Incorporated have been selected to commence the work immediately upon Council's approval of the Agreement, which has been approved by the Mayor and by DHC.

We recommend and urgently request approval of the attached resolution that authorizes the Buildings and Safety Engineering Department to proceed, with waiver of reconsideration.

Respectfully submitted,



Amru Meah
Director

cc: Detroit Housing Commission, 1301 E. Jefferson, Detroit, MI 48207

BY COUNCIL MEMBER: _____

RESOLVED, based on determination by the City's Department of Buildings and Safety Engineering that the existing, vacant residential structures that constitute the former Douglass Public Housing Project constitute a present danger to the health, safety and welfare of the residents of the City of Detroit, and are in need of demolition as soon as that can be accomplished, a determination with which this Council concurs, that the City shall proceed with expedited demolition of these structures, in phases under the City's normal demolition procedures, pursuant to and in accordance with the terms and conditions set forth in the attached Intergovernmental Agreement between the City and the Detroit Housing Commission, which Agreement is hereby authorized and approved.

Further revised draft prepared 7/24/08 for presentation to Council for review and approval.

INTERGOVERNMENTAL AGREEMENT

This Agreement is made and entered into as of the ____ day of _____, by and between the **City of Detroit**, a Michigan municipal corporation (the "**City**"), acting by and through its Buildings and Safety Engineering Department ("**B&SE**") with offices located in Suite 401, Coleman A. Young Municipal Center, 2 Woodward Avenue, Detroit, Michigan 48226 and the **Detroit Housing Commission**, a Michigan public body corporate (the "**Commission**"), with principal offices located at 1301 East Jefferson, Detroit, Michigan 48207, pursuant to and in accordance with statutory authority set forth in the Housing Cooperation Law of the State of Michigan, 1937 PA 293, as amended, being MCL Section 125.601, et seq., and the Urban Cooperation Act of 1967 of the State of Michigan, 1967 (Ex Sess) PA 7, as amended, being MCL Section 124.501, et seq.

RECITALS

WHEREAS, the Commission is the owner and operator of the federally funded public housing development known as Douglass Homes (the "**Project**"), identified by principal street address as 2501 St. Antoine, consisting of multiple structures of varying height with various specific addresses set forth on **Exhibit A** attached hereto and incorporated by reference, the location of which is shown on the site plan attached hereto as **Exhibit B** encompassing the area generally bounded by Wilkins, Beaubien, Chrysler Service Drive, Winder, Alfred and St. Antoine Streets in the City of Detroit; and

WHEREAS, the Commission has determined the Project to be untenable, and has relocated all former Project residents to other decent, safe and sanitary housing; and

WHEREAS, the Commission has further concluded that it is economically infeasible to repair and rehabilitate the existing structures to restore them to habitability and that it is preferable to demolish the existing Project in its entirety; and

WHEREAS, the Commission has requested and received the approval of the U.S. Department of Housing and Urban Development ("**HUD**") to proceed with demolition of the Project and redevelopment of the site; and

WHEREAS, the Project is currently vacant and has suffered vandalism such that despite the Commission's best efforts to keep the Project secured and boarded-up pending commencement of demolition, portions of the Project are open to trespass on a recurring basis and in need of expedited demolition to eliminate an unsafe, hazardous condition adversely impacting the well being of the residents of the City of Detroit; and

WHEREAS, the City currently has multiple demolition and hazardous materials abatement contractors under contract with the City, acting by and through its B&SE Department, that possess the present capacity to undertake hazardous material abatement and demolition activities on an expedited basis on the City's behalf;

WHEREAS, the City wishes to make the services of its demolition and abatement contractors available to the Commission and the Commission deems it in its interest to avail itself of the services of the City's contractors to demolish the Project structures identified on Exhibit A, the location of which is shown on Exhibit B, together with Project infrastructure appurtenant thereto, on an expedited basis; and

WHEREAS, the City and the Commission mutually agree it to be prudent and preferable to undertake demolition of the Project in phases, commencing with the twelve two-story row house buildings situated between St. Antoine and Beaubien streets, identified by street address on Exhibit A and shown by location on Exhibit B, with demolition by the City of the mid-rise and hi-rise structures identified and shown on attached Exhibits A and B, together with infrastructure improvements appurtenant thereto, to follow in one or more future phases, provided the City and the Commission mutually agree to the terms, conditions, specifications and price for such future phase demolition activities proposed to be undertaken by the City for the mutual convenience and benefit of the City and the Commission.

NOW THEREFORE, the parties mutually agree as follows:

1. The Commission shall authorize the City and its contractors the right to enter upon the Douglass Homes site and demolish the twelve (12) row house structures identified with specificity on Exhibit A in accordance with the City's normal demolition procedures and this Agreement, subject however to express approval by the Detroit City Council of this Agreement.

2. The Commission agrees to reimburse the City for costs incurred in connection with the demolition of the row house structures, for a total amount not to exceed \$300,000.00 for demolition activities themselves, which amount has been estimated by the City on the basis of the bid prices for non-emergency demolition of structures in existing City demolition contracts, together with such additional amounts as may be required to cover costs incurred by the City and/or its contractor[s] for environmental inquiry as to the condition of the row house structures and abatement of hazardous conditions discovered therein requiring abatement prior to commencement of actual demolition to the extent required to comply with National Emission Standards for Hazardous Air Pollutants ("NESHAP") and Michigan Department of Environmental Quality ("MDEQ") requirements and regulations, not to exceed the amount of \$100,000.00, to cover such environmental inquiry and remediation activities. The City and Commission both acknowledge that completion of such activities is a prerequisite to demolition of the structures themselves. Environmental inquiry and remediation will be performed by Lakeshore Engineering in accordance with its existing contract with the City, a copy of which is attached to this Agreement as Exhibit C. Demolition of the twelve two-story row house

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buildings identified and shown on Exhibits A and B will be performed by Joy Construction in accordance with its existing contract with the City, a copy of which is attached to this Agreement as Exhibit D.

3. The City may, at its expense and within its sole discretion, provide a screened fence border along the perimeter of the site while demolition activities are underway.

4. The City agrees to insure that all of the utilities running to the row house structures are disconnected and provided shutoffs as needed and further agrees to expedite the approval of all reviews, permits, licenses, etc. needed to allow the demolition of the row house structures to proceed.

5. The Commission, acting by and through its designated agent[s], shall have the right to oversee and monitor the demolition activity of the City's demolition contractor and shall have the authority to stop the demolition if the City's contractor fails to comply with the demolition specifications in the demolition contract attached hereto as Exhibit C, provided, however, that the Commission or its agent shall first have given the City and the contractor written notice of and reasonable opportunity to cure and/or correct any such alleged failure to adhere to contract specifications or other alleged deficiency in performance of the work, upon which event this Agreement may be terminated, at the option of either party, by written notice delivered to the other party specifying a termination date, with no additional monetary penalty or consequence other than payment by the Commission for costs incurred for demolition work completed through the specified termination date.

6. The City affirmatively represents to the Commission that the City's existing demolition contracts and abatement services contracts contain insurance and indemnity provisions whereby the contractors promise to provide insurance certificates in favor of the City for prescribed coverage amounts and to indemnify and hold the City harmless from any and all liabilities, obligations and damages arising out of the contractors' negligent or tortious acts, errors, or omissions arising out of the contractors' performance or provision of services pursuant to said contracts.

7. With respect to such insurance and indemnity provisions:

- a. The City and the Commission mutually agree that the reference to and description of such provisions set forth in this Agreement shall not be deemed to substitute for or diminish or modify in any respect the specific terms and provisions therefore set forth in the City's contract documents for demolition and abatement services.
- b. The City shall provide the Commission with copies of its existing contracts such that the Commission can review the precise terms and conditions for insurance and indemnity and determine them to be acceptable to it prior to any issuance by

the City of any Notice to Proceed pursuant to this Agreement.

- c. The City shall cause said contractors to extend the scope of said insurance and indemnity, by express written instrument, to encompass the Commission and any agents designated in writing by the Commission to be entitled to the benefit thereof prior to the City's issuance of any Notice or Notices to Proceed under said contracts with the provision of demolition and abatement services contemplated under this Agreement.

8. The City and the Commission further mutually agree that any contractor or contractors retained by the City to provide the demolition and abatement services contemplated under this Agreement shall be deemed to be agents of the City, and not the Commission, and nothing in this Agreement shall be deemed to diminish or in any way modify the City's rights and remedies for default under said contracts with respect to services provided pursuant thereto.

9. If the City and the Commission mutually agree to proceed with demolition by the City, in subsequent phases, of the mid-rise and hi-rise structures on the Douglass site, this Agreement may be amended to expand its scope to encompass those future phases, subject, however, to City Council approval of any such amendment and expansion of the scope of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

City of Detroit

By: _____
Kwame M. Kilpatrick, Mayor

Detroit Housing Commission

By: _____
Name: Eugene E. Jones, Jr.
Executive Director

EXHIBIT A

Douglass Homes

Master Street Address: 2501 St. Antoine

Individual building street addresses:

Two story row house structures:

Bldg 1204 2801-19 St. Antoine
Bldg 1205 2745-85 St. Antoine
Bldg 1207 2725-41 St. Antoine
Bldg 1208 2701-21 St. Antoine
Bldg 1209 2661-99 St. Antoine
Bldg 1210 2637-57 St. Antoine
Bldg 1211 2601-15 St. Antoine
Bldg 1212 2621-35 St. Antoine
Bldg 1214 2549-63 St. Antoine
Bldg 1215 2533-47 St. Antoine
Bldg 1217 2517-31 St. Antoine
Bldg 1218 2501-15 St. Antoine

Mid-rise structures:

Bldg 1105 544 Wilkins
Bldg 1106 566 Wilkins

Hi-rise structures:

Bldg 1301 2701 Chrysler
Bldg 1302 2701 Chrysler
Bldg 1305 2700 St. Antoine
Bldg 1306 650 Alfred

EXHIBIT B

Douglass Homes Site Plan

